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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 187

ZOILO MENDEZ RIOS,
Petitioner,

v.

CLARENCE K. BOWIE, ET ALS., TRUSTEES,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF

June 11, 1941.

HENRY G. MOLINA,
Counsel for Petitioner.

Appeal Printing Co., Inc., 130 Cedar St., New York

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Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Zoilo Mendez Ríos, respectfully shows:

This is a petition for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit to review a judgment made and entered in said Circuit Court of Appeals on March 19, 1941, by which a decree of the District Court of the United States for Puerto Rico dismissing Petitioner's complaint was affirmed.

The mandate of the Circuit Court of Appeals has gone forward to the District Court.

I

Statement of the matter involved

Petitioner, when the bill of complaint was filed, was the owner of a rural property named "Mercedes" at

Gurabo, Puerto Rico, which he acquired on May 3, 1935 upon the dissolution of the partnership "Mendez y Hermano", said partnership having acquired the property on June 2, 1920 from Juan Antonio Roig Torruellas. In accordance with the records of the Registry of Property, the said "Mercedes" property was subject, as servient tenement, to a servitude of right of way for a railroad line in favor of the property "Central Juncos", as dominant tenement, said servitude having been granted in the following terms:

> The aforesaid servitude, as has been stated, is perpetual in character and is constituted in favor of the rural property described in the third paragraph of the expositive part (of this document) as dominant tenement, and which is owned by The Juncos Central Company, the cars and engines of The Juncos Central Company being permitted in virtue of said servitude to run freely over the roads established, without any restriction whatsoever, and said railroad may be repaired and conserved as required by the necessities of the service.

In spite of the clear provision of the deed, that the servitude was constituted in favor of a certain rural property ("Central Juncos" property), as dominant tenement, and of the definite provisions of the Civil Code of Puerto Rico, amongst others Section 470 providing that

> Servitudes are inseparable from the tenement to which they actively or passively belong.,

the lower courts held that the respondents, as owners of the "Central Juncos" property, could use said servitude not only in connection with, or for the benefit of, the "Central Juncos" property, but also in connection with

the business of several other sugar factories or centrals and numerous properties operated by respondents which had been acquired by their predecessor, The United Porto Rican Sugar Company, long subsequent to the constitution of said servitude, such use consisting principally in carrying the sugars and molassesses produced at such other centrals across the "Mercedes" property, as also the "Central Juncos" property, to the general warehouses of the respondents at the port of Humacao and carrying in the opposite direction, from the port of Humacao to the other centrals owned and operated by the respondents, machinery, fertilizers, fuel and other materials and supplies. No such use of the servitude could have been contemplated by the parties at the time it was constituted on May 22, 1917. The whole question is stated and decided in the last seven paragraphs of the opinion of the Honorable Circuit Court of Appeals (R. 72 to 75; 118 F. 2d 441).

II

Reasons relied upon for the allowance of the writ

This case involves an important question of local law concerning real property which has been decided by the lower Federal courts in conflict with applicable decisions of the Supreme Court of Puerto Rico concerning provisions of the Civil Code of Puerto Rico, to wit, sections 465, 467 and 470, to the effect that real or predial servitudes are enjoyed by the owner of the dominant tenement solely in the benefit of such tenement and they are inseparable from the dominant tenement. It involves an important question of Federal law which has not been, but should be, finally settled by this Honorable Court, viz., whether the United States District Court for Puerto Rico, in an equity proceeding, is bound by the insular

statutes or codes fixing rights under contracts and conveyances, specially those affecting real property.

There is presented herewith, as part of this petition, a certified transcript of the record of this cause in the Circuit Court of Appeals.

WHEREFORE, Petitioner prays that a writ of certiorari be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the First Circuit, commanding that Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings in said Circuit Court of Appeals in this cause, to the end that said cause may be reviewed and determined by this Court as provided by law, and that the judgment of said Circuit Court of Appeals may be reversed by this Court, and the mandate thereof recalled and revised, and that Petitioner may have such other or further relief or remedy in the premises as to this Court may seem fit and just; and your Petitioner will ever pray.

ZOILO MENDEZ RIOS,
By HENRY G. MOLINA,
Solicitor for Petitioner.

I hereby certify that I have examined the foregoing Petition, that in my opinion it is well filed and entitled to favorable consideration of the Court, and that it is not filed for the purpose of delay.

San Juan, Puerto Rico, June 11, 1941.

HENRY G. MOLINA,
Counsel.